

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

GENERAL REINSURANCE CORP.,	:	CIVIL ACTION
Plaintiff	:	
	:	
v.	:	NO. 05-2253
	:	
MS CASUALTY INSURANCE	:	
CORP., et al.	:	
Defendants.	:	

MEMORANDUM

Plaintiff General Reinsurance Corporation (“GenRe”) filed a Complaint for Interpleader and Declaratory Relief against MS Casualty Insurance Corporation (“MS”), American Reliable Insurance Corporation (“ARIC”) and Legion Insurance Company (“Legion”), which is currently in liquidation, on May 12, 2005. In response, M. Diane Koken, the Insurance Commissioner of Pennsylvania, filed a Motion on behalf of Legion Insurance to Dismiss or Stay the action.¹ On July 25, GenRe filed its response. On August 8, MS and ARIC filed a Motion for Leave to File the Joinder of MS Casualty and ARIC to GenRe’s Response to the Motion to Dismiss or Stay. On August 16, the Mississippi Insurance Guaranty Association filed a Motion to Intervene. I will grant the Insurance Commissioner’s Motion to Dismiss. The Motion for Leave to Join and Motion for Leave to Intervene will both be dismissed as moot.

I. Background

Defendant Legion Insurance Company was party to a number of reinsurance

¹MS and ARIC, Legion’s co-defendants, filed Answers in response to the Complaint.

contracts with its two co-defendants in this case, MS and ARIC, in which Legion agreed to undertake responsibility for the liabilities of ARIC's and MS's Workers' Compensation and Employers' Liability insurance policies, issued between specific dates. In subsequent agreements, Legion assigned to GenRe all workers' compensation liability business written by MS, and that business assumed by MS from ARIC. In 2003, Legion was declared insolvent by the Insurance Commissioner of Pennsylvania and was ordered liquidated.

GenRe admits liability to Legion in the amount of \$2,488,336.19, and has professed its intent to pay that amount into Legion's liquidated estate, or, in the alternative, into escrow. ARIC and MS, however, dispute how much each of them is owed by the liquidated estate, and have threatened independent legal action against GenRe to recover the funds owed them by Legion. GenRe filed this interpleader action requesting that the court discharge it of any further liability upon deposit of the \$2,488,336.19 into escrow, and bar MS and ARIC from suing it for further amounts.²

The Insurance Commissioner of Pennsylvania filed a Motion to Stay or Dismiss, contending that this court should dismiss the interpleader action under the Burford abstention doctrine. GenRe responded, arguing that the Burford abstention doctrine does not apply to the instant suit. MS and ARIC then filed a motion for leave to file a joinder

²GenRe has filed this interpleader action in federal court because at present it is unable to do so in state court. Pennsylvania procedural law limits interpleader actions to those brought by defendants. PA. R.CIV. P. 2301 et seq. Federal procedural law, in contrast, allows interpleader to be plead by any party "having claims against the plaintiff." FED. R.CIV. P. 22. Federal District Courts have original jurisdiction for interpleader actions. 28 U.S.C. § 1335.

to GenRe's opposition to Legion's motion to dismiss.³

II. Standard of Review

The Burford abstention doctrine applies when federal relief is requested but the state remedy is adequate or where an adequate statutory method of review has been provided. Burford v. Sun Oil, 319 U.S. 315, 333 (1943). In the Third Circuit, if there is timely and adequate state court review available, a federal court may, at its discretion, abstain from interfering with the proceedings of a state administrative agency:

(1) when there are difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar; or (2) where the exercise of federal review of the question in a case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern.

Feige v. Sechrest, 90 F.3d 846 (3d Cir. 1996) (internal quotes omitted). Further, where a state has created a complex and thorough regulatory scheme that includes state court supervision and is central to state interests, federal abstention is appropriate if the dispute “deals primarily with state law issues and will disrupt a state’s efforts to establish a coherent policy with respect to a matter of substantial public concern.” Lac D’Amiante du Quebec, Ltee v. American Home Assurance Co., 864 F.2d 1033, 1043 (3d Cir. 1988).

III. Discussion

Plaintiff argues that Burford does not apply in this situation because: (1) there is no

³In furtherance of their motion to join GenRe's brief, MS and ARIC also noted that Legion, via the statutory liquidator, had filed a lawsuit in federal court in Mississippi, arguing that by that action, Legion had negated their Burford abstention argument. Because I find Burford abstention appropriate, I will not address this issue.

per se rule requiring abstention; (2) the action, if successful, will not remove assets from the liquidation estate; and (3) resolution of this issue in federal court will not imperil a “complex regulatory scheme.”⁴

This is a case in which Burford abstention is appropriate. First, the Commissioner does not argue that Burford is a per se rule. Both parties agree, correctly, that Burford requires a case-by-case analysis. Second, GenRe’s argument that asset removal is required to invoke Burford abstention in an insurance liquidation case does not have any basis in Pennsylvania or federal law. By instituting this action, GenRe is attempting to influence distribution of the estate. The nearly \$2,500,000 that GenRe is prepared to escrow is vested in the estate and is in custody of the Commonwealth Court pursuant to the Liquidation Order. Pennsylvania law governs the dissolution of insurance companies. 40 PA. STAT. §§221.1-221.63. Distribution of the estate of a liquidated insurance company is precisely what the Pennsylvania Insurance Act was intended to accomplish. GenRe’s claim against MS and Legion therefore arises under the Pennsylvania Insurance Act, and falls under the jurisdiction of the Commonwealth Court. Id.

Third, Pennsylvania has created a very specific, and extensive, scheme regulating the liquidation of insolvent insurers. Id. The Third Circuit has held that “there can be

⁴Further, in their Motion for Joinder, ARIC and MS argue that since the Commissioner filed a lawsuit in federal court in Mississippi, seeking insurance premiums owed to Legion it has negated the arguments made in the Motion to Dismiss or Stay. ARIC and MS further argue that the Commissioner has no right to the disputed money based on a recent Pennsylvania Supreme Court per curiam affirmance of a distribution decision by the Commonwealth Court related to Legion’s liquidation. I find that this argument is immaterial to the narrow issue of abstention, and decline here to address it.

little doubt that parallel federal and state proceedings would disrupt Pennsylvania's legislative framework for the liquidation of insolvent insurers." Feige, 90 F.3d at 847. Thus, influencing the distribution of a liquidated insurance provider at this stage would in fact interfere with the state regulatory scheme.

Pennsylvania considers the regulation of its insurance industry to be of substantial public concern. Further, distribution of the estate of a liquidated insurance company is integral to the state regulatory scheme. 40 PA. STAT. §221.20(c).⁵ The Third Circuit has found that "the regulation of insurance companies unable to meet their obligations entails the type of strong state interest in which application of Burford abstention is appropriate." Lac D'Amiante du Quebec, 864 F.2d at 4045. Thus, Third Circuit precedent establishes that state regulation of the liquidation of insurance companies is the type of state regulatory scheme to which the Burford abstention doctrine applies. See, e.g. Feige, 90 F.3d 846 (3d Cir. 1996); Lac D'Amiante du Quebec, 864 F.2d 1033 (3d Cir. 1988).

IV. Conclusion

I find that Pennsylvania's interest in regulating the distribution of Legion's assets is substantial, and at present any harm to GenRe is theoretical. Further, GenRe would have an adequate remedy in the state court system, should MS or ARIC file suit subsequent to the Insurance Commissioner's distribution of the estate. At this point, it is

⁵The filing of MIGA's Motion to Intervene is further support that Burford abstention is appropriate here. Were this case to go forward, distribution of the estate would be litigated in federal court, in contravention of the intent of the strong Pennsylvania interest, as well as Third Circuit law.

unclear whether an interpleader action would even be necessary, as the Commonwealth Court has not yet reviewed the distribution of the liquidated estate. Thus, I find that Burford abstention is appropriate in this case.

ORDER

STENGEL, J.

AND NOW, this day of August, 2005, upon consideration of the Motion of the Statutory Liquidator for Defendant Legion Insurance Company (in Liquidation), to Dismiss or, in the alternative, to Stay the Action, and all responses thereto, it is hereby **ORDERED** that the Motion to Dismiss is **GRANTED**.

BY THE COURT:

LAWRENCE F. STENGEL, J.